RE SYED KAMARUZAMAN SYED ABDULLAH; EX P BANK PEMBANGUNAN MALAYSIA BHD

HIGH COURT MALAYA, KUALA LUMPUR
LEE SWEE SENG JC
[BANKRUPTCY NO: D-29-458-2011]
18 SEPTEMBER 2012

BANKRUPTCY: *Notice - Setting aside - Application for - Whether amount and interest claimed in bankruptcy notice defective - Whether judgment creditor showed particulars of all payments made by judgment debtor even if judgment entered for more than what was actually due - Whether judgment debtor prejudiced by amount claimed in bankruptcy notice - Whether there was miscarriage of justice*

Bank Pembangunan Malaysia Berhad ('the JC') obtained judgment against Syed Kamaruzaman bin Syed Abdullah ('the JD') in April 2005 for RM11,593,415.61 with interest at 8% per annum on that sum running from 30 April 2003 to the date of settlement. Before the entry of the judgment, the JD had paid various sums to the JC at different times totalling RM5,127,295.76 such that on the day judgment was entered the amount that was in fact owing to the JC was RM6,466,119.85 and not RM11,593,415.61. The JC subsequently filed a bankruptcy notice ('BN') against the JD based on a judgment debt of RM9,752,906.78. In the BN, the JC gave particulars of how it had obtained that sum starting from the original judgment sum less the payments received and with the judgment interest running on the balance of the judgment sum after each payment was made. The JD applied to set aside the BN *inter alia* on grounds that the sum claimed in the BN was wrong as the JC had entered judgment for more than what was due; and that as it was not disputed that only RM6,466,119.85 was actually owing to the JC when judgment was entered, the interest claimed under the judgment should have been on that figure and not on the larger sum. The JD had not applied to set aside or appeal against the judgment but had filed a separate suit to declare the judgment null and void. That suit was however, struck out by the High Court which decision was upheld by the Court of Appeal. Leave to appeal against that decision to the Federal Court was refused. The JC argued that no prejudice was caused to the JD because the BN took into account all payments that were made by him. The registrar dismissed the JD's application. He thus appealed to the Judge-in-Chambers.

Held (dismissing appeal):

(1) Even though the judgment sum was not varied, the bankruptcy court could not go behind the judgment. The JD did not appeal against the judgment or apply to have it set aside. It therefore

remained valid and enforceable. If the JD had issues with the judgment, he should have applied to set it aside or to vary it. This was not a case where the JC had perpetrated fraud on the JD as the JC had taken into account all payments that were made. As such, no prejudice or miscarriage of justice had occurred that justified the bankruptcy court going behind the judgment. (paras 13, 14, 15 & 16)

(2) Until the interest rate and the commencement date of charging of the interest were varied by the court upon application by the JD, the bankruptcy court had to apply the interest rate and the date of charging of the interest on the correct amounts outstanding. The correct amounts outstanding at the various key dates of 30 April 2003, 5 May 2003 and 4 September 2003 had all been set out with the interest running from 30 April 2003 for the relevant periods. (para 22)

(3) The court agreed with the JC that even if the JD had successfully applied to vary the judgment to reflect the correct amount that was outstanding at the date of the judgment, the calculation of the amount outstanding would have still been the same as was set out in the BN. As the BN had taken into consideration the various sums paid before judgment, the amount claimed in the BN could not be said to be incorrect; nor was the interest charged wrong or excessive. (paras 17, 30 & 34)

Case(s) referred to:

Armitage v. Parsons [1908] 2 KB 410 ***(refd)***
Hughes v. Justin [1894] 1 QB 667 ***(refd)***
Lee Tain Tshung v. Hong Leong Finance Bhd [2000] 4 CLJ 15 CA ***(refd)***
Muir v. Jenks [1913] 2 KB 412 ***(refd)***
Re Arunachalami Ex Parte Indian Overseas Bank Ltd [1967] 1 LNS 142 HC ***(refd)***
Sovereign General Insurance Sdn Bhd v. Koh Tian Bee [1988] 1 CLJ 155; [1988] 1 CLJ (Rep) 277 SC ***(refd)***
Vijendran Ponniah v. MBF Country Homes & Resorts Sdn Bhd & Anor [2002] 2 CLJ 157 HC ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 2 rr. 1(1), (2)

For the appellant/judgment debtor - A Lourdes; M/s Ngeh & Co
For the respondent/judgment creditor - Celine Chelladurai (Elizah Adam with her); M/s Zaid Ibrahim & Co

Reported by Ashok Kumar

JUDGMENT

Lee Swee Seng JC:

Prologue

[1] The judgment creditor ('JC') here had obtained summary judgment against the judgment debtor ('JD') in 2005. There had been no appeal. In January 2011 the JC filed a bankruptcy notice ('BN') against the JD. The JD filed an application to set aside the BN. The JD contended that the summary judgment obtained was for a sum larger than what was owing at the date the judgment was entered. However the JC argued that while it may be so, the BN issued had taken into consideration each and every sum paid by the JD before the summary judgment was entered and as such the JD was not prejudiced at all.

[2] In any event the JD had attempted by a separate suit to declare the summary judgment obtained to be null and void. However he failed in the High Court as well as in the Court of Appeal. Leave to appeal to the Federal Court was not granted.

[3] At the heart of the dispute is whether the JC ought to have applied to vary the judgment obtained to reflect the correct sum owing before proceeding with bankruptcy or would taking into consideration the payments made be sufficient, more so when the JD himself had failed to impugn the judgment obtained. There has been no application filed to set aside the summary judgment obtained on ground that the judgment was obtained for a sum greater than what was owing at the point the judgment was entered.

Parties

[4] The JD is a guarantor of a loan extended to Hemat Shipping Sdn Bhd by the JC. On 20 April 2005 summary judgment was entered against Hemat Shipping Sdn Bhd and one Hamzah bin Mat Sah as well as the JD for the sum of RM11,593,415.61 together with interest at the rate of 8% per annum on the said sum from 30 April 2003 to date of settlement with costs to borne by all the defendants therein.

Problem

[5] On 28 January 2011 the JC filed a bankruptcy notice (BN) against the JD for the sum of RM9,752,906.78.

[6] The brief calculation setting out the amount outstanding appears in the bankruptcy notice (encl. 3) at p. 2 which is reproduced below:

	Amount (RM)	INTEREST
Judgment entered 20.4.2005	11,593,415.61	
[-] Payment received on 30.4.2003	627,902.62	
[-] Payment received on 30.4.2003	134,521.92	
[-] Payment received on 30.4.2003	209,055.77	
Sub Total	10,621,935.30	
[+] Interest @8% p.a. on 10,621,935.30 from 30.04.03 until 04.05.03		11,640.48
Sub Total	10,621,935.30	
[-] Payment received on 05.5.2003	2,096,555.79	
[-] Payment received on 05.5.2003	201,831.62	
[-] Payment received on 05.5.2003	849,407.47	
[-] Payment received on 05.5.2003	343,398.13	
[-] Payment received on 05.5.2003	598,763.96	
Sub Total	6,531,978.33	
[+] Interest @8% p.a. on 6,531,978.33 from 05.05.03 until 03.09.03		174,663.31
[-] Payment received on 04.09.2003	54,781.48	
[-] Payment received on 04.09.2003	11,077.00	
Outstanding as at 04.09.2003	6,466,119.85	

[7] Therefore the creditor had received a sum of RM5,127,295.76 before the judgment was obtained by the creditor on 20 April 2005. This is not disputed by the JC.

[8] Subsequent to that there were payments received after the judgment was entered and they have all been accounted for in the BN.

[9] Thus, prior to the JC obtaining summary judgment on 20 April 2005, the JC had received a payment of RM5,127,295.76 in the year 2003 which was not accounted for nor disclosed at the time of obtaining judgment for the excessive sum of RM11,593,415.61.

[10] Though the amount paid had been taken into consideration in the issuance of the BN, the JD was visibly most unhappy that interest at the rate of 8% per annum continued to run from 30 April 2003 as stated in the judgment extracted. However to put the record straight, as can be seen from the table of payments made, the interest was not on the larger sum entered but was charged only against the reduced sums for the relevant periods as and when the payments were received.

Prayers

[11] The JD cried foul and castigated the case as a concealment of facts by the JC when it entered judgment *vide* summary judgment for RM11,593,415.61 on 20 April 2005 where payment of RM5,127,295.76 was concealed from the court. He filed an application in encl. 9 on 21 July 2011 to set aside the BN on the following grounds:

(a) That the BN was wrongly issued and not in accordance with the Bankruptcy Act 1967 and the rules made thereunder;

(b) That the sum claimed and the interest thereon is disputed, unreasonable and wrong in law;

(c) That a sum of RM5,127,295.76 had been received by the JC before judgment was entered without taking that sum into account and that the issuance of the BN without first correcting the judgment of the excessive sum of RM11,593,415.61 is unreasonable, unconscionable and wrong in law; and

(d) That the bankruptcy action against the JD has seriously prejudiced the JD as a guarantor.

[12] The learned Senior Assistant Registrar had on 27 April 2012 dismissed the said application in with costs of RM500. Hence this appeal.

Principles

Whether The Court Should Go Behind The Judgment Even Though The Judgment Has Not Been Varied

[13] In *Sovereign General Insurance Sdn Bhd v. Koh Tian Bee* [1988] 1 CLJ 155; [1988] 1 CLJ (Rep) 277 at pp. 279 and 280, the Supreme Court has held that:

> In the exercise of his jurisdiction in bankruptcy proceedings, the learned judge cannot go behind the judgment ... As a general principle, the validity of the judgment debt will only be inquired into when there is evidence of fraud or collusion or miscarriage of justice.

[14] Here the JD had not appealed against the summary judgment entered. On the contrary he applied by way of a separate action in Suit S-22-899-2010 in the High Court of Malaya at Kuala Lumpur to declare the judgment null and void. The said suit was struck out on 8 March 2011 with costs of RM5,000. The Court of Appeal had also dismissed the JD's appeal and leave to appeal to the Federal Court had not been granted.

[15] In the circumstance the summary judgment entered on 20 April 2005 remains valid and enforceable. To be fair to the JC, it has taken into consideration every single payment made by the JD and the interest of 8% per annum was only exacted on the reduced sum for the relevant periods as and when payments were made. If the JD is contending that interest should not be at 8% per annum and that it should not run from 30 April 2003, he should apply to court to set it aside or vary it accordingly.

[16] This is not a case where the JC had perpetrated fraud on the JD as it had voluntarily taken into consideration all sums paid before the judgment was entered though the judgment had been entered for a far bigger sum. Neither is the JD saying that there are sums paid which had not been taken into consideration. In the circumstance I cannot see how the JD has been prejudiced or that a miscarriage of justice had been caused that would justify this court going behind the judgment obtained which judgment had been affirmed by another High Court, the Court of Appeal and the Federal Court as it had not granted leave to appeal from the Court of Appeal.

[17] I agree with learned counsel for the JC, Miss Celine Chelladurai, that the calculation would still be the same even if in a subsequent application, the JD successfully vary the judgment to so reflect the correct amount outstanding as at the date the judgment was entered.

Whether Interest Calculated In The Judgment Sum Of RM11,593,415.61 Is Wrong And Excessive

[18] Learned counsel for the JD, Mr A Lourdes, submitted that the JC has calculated the interest on the sum of RM11,593,415.61 from 30 April 2003 which is clearly the calculation of interest on a non-existing outstanding sum.

[19] According to Mr Lourdes, the calculations in the bankruptcy notice as shown in the above table showed that interest of 8% per annum was wrongfully calculated on RM10,621,935.30 when it should obviously be calculated on the sum of RM6,466,119.85 since it has been admitted that the sum due and owing at April 2005 was RM6,466,119.85 on 30 April 2003 and not RM11,593,415.61.

[20] He therefore concluded that the JC's calculation of judgment interest of 8% per annum on the higher sum from 30 April 2003 until 4 September 2003 is obviously a gross miscalculation since the outstanding sum is RM6,466,119.85. The charging of interest of 8% per annum for two years on the higher sum is clearly misconceived and renders the JC's claim in the said notice as null and void. Premised on the above, he submitted that the BN should be set aside.

[21] Mr Lourdes for the JD referred the court to the following authorities:

(a) *Re Arunachalami Ex Parte Indian Overseas Bank Ltd* [1967] 1 LNS 142; [1968] 1 MLJ 89, at p. 90.

> Where the amount claimed in the bankruptcy notice is in excess of what is due and notice is given within 7 days after service that the bankruptcy notice is disputed on ground of mistake, the bankruptcy notice becomes invalid since it refers to a sum in respect of which the judgment creditor could not have issued execution. This would be the effect of the proviso to section 3(2) of the Bankruptcy Ordinance.
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> It is common ground that between the date of the judgment and the request of a bankruptcy notice, the judgment-debtor had paid a sum of $300 towards settlement of his debt, so that $4,044.64 cents and not $4,344.64 cents was owing on the judgment.
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> The bankruptcy notice is, therefore, bad and is set aside. There will be an order for costs to be paid by the judgment-creditor.

(b) *Vijendran Ponniah v. MBF Country Homes & Resorts Sdn Bhd & Anor* [2002] 2 CLJ 157 at p. 163; [2002] 1 MLJ 535, at p. 536.

> Orders obtained through willful falsehood and by concealment of material facts could not amount to valid judgments. As there was no valid judgment, the court rejected the argument that the default judgment, until set aside, was a good and enforceable judgment and that the first defendant was entitled to rely on the default judgment as a basis to proceed with the bankruptcy proceeding.

(c) *Hughes v. Justin* [1894] QB 667, at p. 669.

> ... the Plaintiff was within his rights in issuing the writ, he was wrong in signing Judgment for more than was then due, and as nothing was due he could only sign Judgment for the costs. The Judgment for the debt and costs was wrong, and *Anlably v. Praetorius* shows that the Defendant has a right *ex debito justitiae* to have it set aside.

[22] However I fail to see how the calculation of the interest had been wrong. The JD had wanted a more favourable calculation of interest to run only from 20 April 2005 on the sum of RM6,466,119.85 when there is no justification for it. The judgment allows for interest to be charged from 30 April 2003 and from the breakdown of the interest calculation I cannot see where it had been charged on an amount not outstanding from 30 April 2003 when some three payments were made. Whilst agreeing with the principle in *Re Arunachalam* (*supra*), it has no application to the facts of this case. Until the interest rate and the commencement date of charging interest are varied by the court upon an application by the JD, this court must apply the interest rate and the date of charging the interest on the correct amount outstanding. The correct amounts outstanding at the various key dates of 30 April 2003, 5 May 2003 and 4 September 2003 have all been set out with the interest running from 30 April 2003 for the relevant periods.

[23] I accept too the principle in enunciated in *Vijendran Ponniah* (*supra*) but here again I find that this is not a case of willful falsehood or concealment. The JD was represented at all material times in the summary judgment proceedings and it was not a judgment in default. I appreciate that there are situations where clients themselves may not have kept their own solicitors posted as to the amounts that have been paid in the interim. If there was an application to set aside or vary the judgment entered for a larger sum than what was outstanding, learned counsel for the JD might want to prevail upon the court based on O. 2 r. 1(2) of the Rules of the High Court 1980 ('RHC').

[24] Order 2 r. 1(1) and O. 2 r. 1(2) of the RHC are reproduced below:

> Effect of Non-Compliance
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> Non-compliance with rules. (O. 2 r. 1)
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> (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these

rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to para. (3) the court may, on the ground that there has been such a failure as is mentioned in para. (1), and on such terms as to costs or otherwise as it thinks just, *set aside either wholly or in part the proceedings in which the failure occurred*, any step taken in those proceedings or any document, *judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made* and to make such order (if any) dealing with the proceedings generally as it thinks fit. (emphasis added).

[25] His Lordship NH Chan JCA in *Lee Tain Tshung v. Hong Leong Finance Bhd* [2000] 4 CLJ 15 at p. 40; [2000] 3 AMR 2707 at p. 2738 observed as follows in a careful exposition of the new regime introduced by O. 2 r. 1(2) of the RHC *vis-a-vis* the court's power to vary the judgment in an application to set aside a judgment taken for a bigger amount:

In the present case, it will be recalled, the plaintiff (the respondent) had obtained judgment against Lee (the appellant) after striking out his defence in an application under Order 18 r 19 which was heard *inter partes*. That was on February 16, 1987. Lee did not appeal. Instead, some eight years later, in January 1995, he filed a summons to set aside the judgment.

If it had been a regular judgment then Lee's recourse was to appeal. But he did not appeal. Instead, he applied to have the judgment set aside which he could do if the judgment had been irregularly obtained. Lee claims the judgment was irregular because it was obtained for an amount in excess of what was due. In *Cheow Chew Khoon (t/a Cathay Hotel) v. Abdul Johari bin Abdul Rahman* [1995] 1 AMR 759; [1995] 1 MLJ 457 Gopal Sri Ram JCA said at pp 798-799 (AMR); p 482 (MLJ):

> Now, it is an established principle that in monetary claims, the amount for which judgment is entered must be limited to the amount actually due: *Hughes v. Justin* [1894] 1 QB 667, *Muir v. Jenks* [1913] 2 KB 412 ... If judgment is entered for more than is actually due, it is liable to be set aside. If an error appears in the judgment then this may be corrected in the following circumstance:
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> (i) on an application duly made by the plaintiff in that behalf: *Armitage v. Parsons* [1908] 2 KB 410;

A (ii) on an application made by the defendant to set aside the judgment: *Ban Hin Lee Bank Bhd v. Somali Bank (The Independent, 28 November 1988)*, CA; and

(iii) *ex parte*, where the defendant consents to such a course.

B **[26]** The above *dicta* regarding the circumstances on which an error in the judgment amount may be corrected require some explanation lest it be misunderstood. If judgment was obtained for the wrong amount, it is true the plaintiff may apply to have the judgment amount corrected. This is because O. 2 r. 1(2) empowers the court "to allow such C amendments (if any) to be made". Strictly speaking, the authority for this is not *Armitage v. Parsons* [1908] 2 KB 410 which is an old case decided long before O. 2 took its present form but is the rule (r. 1(2)) itself which empowers the court to amend. But on an application made by the defendant to set aside the judgment because it was entered for too much, the court may under O. 2 r. 1(2) set aside either wholly or D in part the judgment or (regardless of who had initiated the application to set aside) exercise its powers under the RHC "to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit". Compare this with the previous position under the old cases of *Hughes v. Justin* [1894] 1 QB E 667 and *Muir v. Jenks* (*supra*), where the law was that unless the party who held the judgment applied to have the incorrect sum put right, the defendant was (upon the authority of *Hughes v. Justin*) entitled as of right to have the judgment for the incorrect amount set aside. See Buckley LJ in *Muir v. Jenks* (*supra*), at p. 417 where he said:

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> ... *Hughes v. Justin* is an authority for the following proposition: If the plaintiff in the absence of the defendant, proceeding properly under the rules, signs judgment for a sum in excess of that which is due to him, the defendant is entitled to have that judgment set aside, unless the party who holds the judgment applies as he may to reduce it to G the proper amount.
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> If application to amend be duly made it may be right not to set the judgment aside but to reduce it to the proper sum; but unless the party who holds the judgment elects to have it put right, then upon the authority of *Hughes v. Justin* it seems to me the defendant is entitled H to say "This is a wrong judgment, set it aside". In the case of *Armitage v. Parsons* the right to amend which I have mentioned was exercised.

[27] There was then no power as there is now in O. 2 r. 1(2) for the court to allow amendments to be made without regard to who had initiated the application to have the judgment set aside.

I

[28] In the present case, unfortunately for him, Lee's only recourse was to apply under O. 2 r. 2 to have the irregular judgment set aside. He was unable to apply under any other provision of the RHC because the judgment that had been obtained against him was not a default judgment. In this appeal we are unanimous in our opinion that he was not entitled to have the judgment, even though it was irregular, set aside under O. 2 r. 2 because we are of the view that his summons to set this judgment aside had not been issued within a reasonable time (see O. 2 r. 2(1)). By allowing eight years to elapse after the irregular judgment had been obtained against him before taking action on it has, in our judgment, precluded him from being allowed to have the judgment set aside because of his unreasonable delay in making his application (O. 2 r. 2(1)). The judge below was right to have dismissed the application. We have, therefore, affirmed his decision and dismissed the appeal. But now, since the matter has been brought to our attention, this court on recognising the irregularity of the incorrect amount on the judgment, has the power under O. 2 r. 1(2) to correct the error in the judgment by amending it to the correct amount regardless of who had initiated the application to have the judgment set aside. This we do by correcting the judgment sum to the amount that is due.

[29] The error arose in this way. I will let the judge below take up the story. This is what Charles Ho J said:

> It is conceded by Miss Willie that the amount of tax indemnity should not have been included in the judgment sum of RM1,211,523.66. The mistake arose in this way. At the time the plaintiff instituted the action they were entitled to include the claim for tax indemnity in respect of the leased equipment because if the leased equipment were disposed of or sold within two years they would have to pay the government for the capital allowance. However, by the time they obtained judgment on February 16, 1987, the two years period had elapsed and the plaintiffs were no longer liable to pay the government the capital allowance. Thus, the plaintiffs (were) no longer entitled then to make the claim for tax indemnity against the defendants. This fact seemed to have escaped the attention of both the parties and the court during the hearing of the Order 18 r 19 application.
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> It is not disputed that when the mistake was discovered the solicitors for the plaintiffs on July 11, 1989 wrote to the then solicitors of the third defendant, Messrs David Fung & Co to notify them that the original judgment sum has been reduced by the amount of the tax indemnity i.e., the sum of RM93,362.37 and the third defendant's solicitors acknowledged this on the same date. The plaintiffs in their execution proceedings have never sought to enforce this part of the judgment. This is reflected in the statements of account rendered to the third defendant. In the circumstance the defendants have not been prejudiced or made to suffer any loss as a result of the mistake.

A This is plainly a case where we should put the matter right and this we do by amending the judgment to reflect the correct amount, which is RM1,117,161.29 (RM1,211,523.66-RM93,362.37). (emphasis added).

[30] As it is the JD has not applied to set aside the summary B judgment obtained. Some seven years have lapsed already. The court may still exercise its discretion to correct the figure taking into account the sums paid before the judgment was entered and if it does so the calculation of the amount outstanding will still be the same as set out in the above table and in the BN. However who are we to say how the C court will decide for none of us know the future much less how a court would decide in a particular case in the exercise of its discretion. For the moment the Judgment remains unscathed and unyielding in spite of the JD's application to impugn it by declaring it null and void at the High Court and on appeal to the Court of Appeal with further leave to D appeal to the Federal Court being dismissed.

[31] I cannot say that the BN, based as it is on such a judgment that has not been stayed, or set aside or varied, is not pursuant to the judgment or that it has been wrongly issued and ought to be set aside.

E **[32]** Learned counsel Mr Lourdes for the JD had placed much reliance on the *dicta* of Buckley LJ in *Muir v. Jenks* [1913] 2 KB 412 where it was said at p. 417:

In the present case the party holding the judgment has never availed himself of that right to bring it down to a proper sum. He has issued F a bankruptcy notice for 20l, which was paid before the judgment was signed, he has, on the face of the notice itself, affirmed that the judgment was wrong. In this state of things it seems to me that the defendant is entitled to say "Inasmuch as you have never sought to set your judgment right but have sought to enforce it by a bankruptcy notice in which you, at the same time, deduct the sum which shows G that the judgment is wrong, I am entitled to have the judgment set aside". I therefore think that this appeal succeeds, and that the judgment must be set aside with costs.

[33] In the light of the *dicta* of His Lordship NH Chan JCA in *Lee Tain Tshung*'s case (*supra*) and our O. 2 r. 1(2) RHC, the above *dicta* H of Buckley LJ appear to have lost much of its sting. In any event, *Muir v. Jenks* (*supra*) was not a case of setting aside a BN but that of setting aside a judgment entered for a bigger sum that what was owing at the time the judgment was so entered though against the backdrop of a BN already issued taking into consideration the amount paid.

I

Pronouncement

[34] In the circumstance I am constrained to dismiss the appeal having satisfied myself that I should not be going behind the judgment and that at any rate the BN issued had taken into consideration the various sums paid before the judgment. The amount claimed in the BN cannot be said to be incorrect. The interest charged cannot be said to have been wrongly or excessively charged. No prejudice has been caused to the JD. I had thus dismissed the JD's appeal to set aside the BN with costs of RM5,000.